INDEX.

	Page.
STATEMENT	1
ASSIGNMENT OF ERRORS	6
ARGUMENT	7
I. The Mexican law and regulations	7
II. The United States as successor in interest of the Mexican Government has not been divested of the servitude or right to use the land for national defense	18
1. The decree of the United States District Court, confirming the Carrillo grant, does not affect the servitude on this land for use for national defense	19
2. The patent of the United States is merely confirmatory and does not release any rights of the United States	19
3. Laches will not run against the Government	21
4. The act of March 3, 1891, 26 Stat. 1095, 1099, has no application to lands other than public lands	21

CITATIONS.

Statutes.

Act of March 3, 1851, 9 Stat. 631	4
Act of March 3, 1891, 26 Stat. 1095	5, 19, 21
Act of July 27, 1917, 40 Stat. 247	1, 6, 18

Cases.

Arguello v. *United States*, 18 How. 539	8
Boquillas Cattle Co. v. *Curtis*, 213 U. S. 339	19
Brown v. *Brackett*, 21 Wall. 387	19
Eldridge v. *Trezevant*, 160 U. S. 452	17
Henshaw v. *Bissell*, 18 Wall. 255	19
La Roque v. *United States*, 239 U. S. 62	21
Los Angeles Milling Co. v. *Los Angeles*, 217 U. S. 217	17, 20
Northern Pac. Ry. Co. v. *United States*, 227 U. S. 355	21
Pueblo of Monterey, 6 L. D 179	14
Schell's Ex'r v. *Fauche*, 138 U. S. 562	16
United States v. *Beebe*, 127 U. S. 338	21
United States v. *Moore*, 95 U. S. 760	16
United States v. *New Orleans Pac. Ry. Co.*, 248 U. S. 507	21
United States v. *Whited & Wheless*, 246 U. S. 552	21

Miscellaneous.

Hall's Mexican Laws (ed. 1885) pp. 108, 133, 148	7, 10, 11
Jones' Rep., Sen. Doc. 18, 31st Cong., 2d sess., p. 27	14
Rockwell's Spanish and Mexican Law, p. 431	11, 12

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, *Appellant,* v. CORONADO BEACH COMPANY. | No. 525.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Congress by the Act of July 27, 1917, c. 42, 40 Stat. 247,[1] authorized the President to take pos-

[1] CHAP. 42. An act authorizing the President to take possession, on behalf of the United States, for use as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, of the whole of North Island in the harbor of San Diego, California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to cause possession to be taken forthwith, on behalf of the United States, for use for national defense and in connection therewith as sites for permanent aviation stations for the Army and Navy and for aviation school purposes, of the whole of North Island, in the harbor of San Diego, California, and the provisions of section three hundred and fifty-five, Revised Stat-

session forthwith for national defense and as sites for permanent aviation stations for the Army and Navy, of the whole of North Island in the harbor of San Diego, California, and the Attorney General or the claimants of North Island to make "application for the determination and appraisement of any rights private parties may have in the said island over and beyond any rights thereto in

---

utes, shall not apply to the expenditure of any appropriations for improvements thereon for aviation purposes.

The Attorney General or the claimants to the said North Island are authorized to make application for the determination and appraisement of any rights private parties may have in the said island over and beyond any rights thereto in the United States to the District Court of the United States for the Southern District of California; the proceedings to be prosecuted in accordance with the laws of the State of California relating to the condemnation of property for public use. Either party may take an appeal from the judgment of such court direct to the Supreme Court of the United States within ninety days after such judgment is rendered. Upon the final ascertainment of the value of any right, title or interest adjudged to be in any private claimants to the said island there shall be paid into court the value of the same as so determined, together with interest thereon at the rate of six per centum per annum from date possession thereof was taken as herein authorized; and thereupon the United States shall be vested with title to said lands. The amount so paid shall be distributed by order of the court to the owner or owners of such right, title, or interest in said island as their respective interests may be determined by the court. The amount necessary to pay the awards in favor of private claimants is hereby appropriated out of any money in the Treasury not otherwise specifically appropriated, to be disbursed under orders of the Secretary of War.

Approved, July 27, 1917.

the United States to the District Court of the United States for the southern district of California." The Act further provided that proceedings be prosecuted in accordance with the laws of the State of California relating to the condemnation of property for public use, and for direct appeal to the Supreme Court of the United States within ninety days after the judgment was rendered.

In conformity with this law and by executive order of the President dated August 1, 1917, the United States took possession of the property (R. 5), and on August 7, 1919, the Attorney General filed a bill of complaint (R. 1) in the District Court of the United States for the southern district of California against the Coronado Beach Company, alleging that the United States "is the owner of an easement, estate, and interest in and to the tract of land * * * for use for the defense or security of the nation;" that it was in possession of the property and had been ever since the first day of August, 1917, for such purposes, but that defendant Coronado Beach Company, a corporation, claims to have, own or hold some right, title, estate, or interest in or to the tract of land adverse to or in conflict with plaintiff's easement, estate and interest therein, and that any such right, title, estate or interest of said defendant was subordinate to the interest of plaintiff in the use of the land for the defense or security of the nation, and that public interest and necessity require possession and use of the land permanently for purposes of national defense.

The prayer of the bill is that defendant be required to answer and assert the nature and extent of its claim, and that such claim be determined and adjudged to be subordinate to the easement, estate, or interest therein of the United States; that defendant be enjoined from claiming or asserting any right, title or interest in said land adverse to or in conflict with the rights of the United States; and that in the event the court shall find defendant has any right, title or interest in or to the land it shall cause the same to be appraised and the value thereof determined and adjudged, and upon payment to defendant of the said value, with interest thereon at six per cent per annum from the date of possession of the tract by the United States, that the court make and enter a proper decree condemning all such estate or interest of defendant in said tract of land, for public use for the defense or security of the nation.

Defendant company answered (R. 4) denying that the United States was the owner of any interest in the land described, alleging that the value of the property sought to be condemned amounted to $7,500,000; that under the Act of March 3, 1851, c. 41, 9 Stat. 631, entitled "An Act to ascertain and settle the private land claims in the State of California," and acts amendatory thereof, the grant of this land had been confirmed by the Board of Commissioners on Private Land Claims in California and by the District Court of the United States for the southern district of California; that in accordance with the final decree entered therein patent for the

land had been issued, and that said decree confirming title to said land was a bar to any claim by the United States of any interest therein for any purpose whatsoever. The answer further sets up the Act of March 3, 1891, c. 561, 26 Stat. 1095, 1099, as a statutory bar to any claim by the United States of any interest in the land.

The case was heard upon a stipulation of facts. R. 25. From this stipulation it appears that on May 15, 1846, Pio Pico, then Governor of California, made a grant to one Carrillo, a Mexican citizen, of the land known as or named "Isla" or peninsula in the port of San Diego, California, and that the land now known as North Island was included in the grant.

In the Mexican grant (R. 28) the Governor declared that he had granted to Carrillo "the aforesaid land in decree of this day, declaring to him the ownership of it by these presents, in conformity with the law of August 18, 1824, and the regulations of November 21, 1828, subject to the approval of the most excellent departmental assembly," under certain conditions, one of which was that the grantee could inclose the land, but not to the prejudice of the crossings, roads and servitudes.

Carrillo conveyed all his rights under the grant to one Simmons (R. 29), and it is conceded that whatever title or interest was held by Simmons became vested by mesne conveyances in the Coronado Beach Company.

The court entered a decree (R. 15) that defendant Coronado Beach Company was, at the time of the commencement of the suit, and now is, the sole and

exclusive owner in fee simple absolute of all lands described, free and clear of any easement, estate, interest, right, title, claim or demand of any kind of the United States for use for the defense or security of the nation, or for any purpose whatsoever, and that title of defendant company in and to the land described, and every part and parcel thereof, be quieted and established against any and all claims or demands whatsoever of the United States.

An appeal from this decree directed to this court as provided for in the Act of July 27, 1917, brings the case before this court.

ASSIGNMENT OF ERRORS.

(R. 40.)

1. Error in decreeing that the Coronado Beach Company is the owner in fee simple absolute of the land described in the decree, and in quieting and establishing its title thereto, because at all times the United States was the owner of an easement and right to use said land for the defense or security of the nation.

2. Error in denying plaintiff's motion to rescind, vacate, and set aside said decree.

Under this assignment of errors appellant presents the following propositions:

(1) *The lands granted to Carrillo by the Governor of the department of California, "in conformity with the law of August 18, 1824," were subject to perpetual servitude for use for purposes of national defense;* and (2) *The United States as successor in interest to the Mexican government has not been divested of this servitude.*

ARGUMENT.

I.

The Mexican Law and Regulations.

For convenient reference we have printed the law of August 18, 1824, and the regulations of November 21, 1828, under the authority of and in conformity with which this grant or donation was made, as an appendix to this brief.

The decree of August 18, 1824, is sections 488 to 502, inclusive, in Hall's Mexican Laws, page 148; the Rules and Regulations of November 21, 1828, are sections 503 to 520, inclusive.

The first provision of the law is the promise to foreigners of security to persons and property. The second provision, §489, is as follows:

> *National Lands.*—2. The objects of this law are those national lands which are neither private property nor belong to any corporation or town (pueblo), and can therefore be colonized.

The fourth and fifth articles are as follows:

> *Lands Exempt.*—4. Those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the sea coast, can not be colonized without the previous approval of the supreme general executive power.
>
> *Land for Public Use.*—5. If for the defense or security of the nation the federal government should find it expedient to make use of any portion of *these* lands for the purpose of

> constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the general congress, or during its recess with that of the government council.

The regulations authorize the governors of the territories "to grant vacant lands in their respective territories to such contractors (impresarios), families, or private persons, whether Mexicans or foreigners, who may ask for them for the purpose of cultivating and inhabiting them," and provides that persons soliciting lands shall file a petition, describing as distinctly as possible, by means of a map, the lands asked for. The regulations further provide that grants shall be made in exact conformity with the laws on the subject, and especially with the law of August 18, 1824.

This law of August 18, 1824, and the regulations made in conformity therewith, were analyzed by this court in its opinion in *Arguello* v. *United States*, 18 How. 539. In that case it was contended that a grant of lands within twenty leagues of the boundaries of a foreign nation and within ten leagues of the seacoast, to a Mexican citizen, was void under the fourth article (§491), of this law unless approved by the supreme general executive power of Mexico. The court denied this proposition and held that §4, prohibiting colonization within twenty leagues of the boundaries of a foreign nation or within ten leagues of the seacoast, was intended to apply only to foreigners who colonized lands in Mexico and had no application to Mexican citizens.

Without analyzing the provisions of the fifth article of the law (§492), the court stated generally in its opinion in that case that the first eight sections of this law apply solely to foreigners. No argument is entered into limiting the fifth article to the lands of foreigners, and the question of whether the Mexican federal government reserved the right to use any portion of its national lands for the purposes of defense or security of the nation was not before the court for determination, and there was no special reason for the court to analyze this in its decision.

By the third article the Mexican *States* were authorized to enact laws for the colonization of their respective demarcation in conformity with this law, but the Act provides for the distribution of vacant land in the *territories* both to foreigners and Mexican citizens. The latter are given preference in their distribution, but no other distinction is made among the citizens except such as is due to private merit, service to the country, or inequality of circumstances.

The first question for consideration therefore, is, whether the language of the fifth article (which provides that if the national federal government shall find it expedient to make use of any portion of *these* lands for the purpose of national defense, it may do so), applies to all of the national lands to be distributed under this law or only to the national lands to be colonized by foreigners.

No good reason can be perceived why the general government should not reserve the right to use lands donated to its citizens equally with those donated to

foreigners who colonize them, for the purposes of national security or defense if the emergency should arise. Indeed, when it is considered that the citizens could be granted lands by the act of the governor of the territory alone on the national boundaries or on the seacoast, and without any supervision by the central government, there is more reason for applying the provisions of the fifth article to the lands of citizens than to those donated to foreigners for colonization purposes, the latter being forbidden to settle within twenty leagues of the national boundaries or ten leagues of the seacoast without the approval of the supreme general executive power.

The power of the national government to take lands in the states for national defense is found in the law of April 6, 1830 (Hall's Mexican Laws, p. 108), which provides that the general government shall credit the value of these lands on the debt due by the state to the federation.

It is interesting to note that in obedience to article 3 of the law of 1824, which directed the congress of the states of the Mexican federation to form laws and regulations for colonization for their respective demarcation in conformity with said act, the congress of the state of Coahuila and Texas on March 25, 1825, eight months after the passage of the law of August 18, 1824, adopted a colonization law, the seventh article of which provides that the government should take care that no lands should be settled upon, whether by Mexicans or foreigners,

except such as merit the approbation of the supreme government, Hall's Mexican Laws, p. 133, §417.

As being the construction of executive officers clothed with the duty of executing the laws governing the territory of California, the attention of the court is respectfully called to the report of Captain H. W. Halleck, then Secretary of State of the Territory of California, to the Military Governor of California, under date of March 1, 1849, found in Rockwell's Spanish and Mexican Law, commencing at page 431. This report purports to be, *inter alia*, "on the titles of lands in California, which may be required for fortifications, arsenals, or other military structures, for the use of the general government of the United States." At page 433 is found this language:

> But, without the previous approval of the supreme government, no territorial governor could make grants of land within ten leagues of the seacoast, nor within twenty leagues of the boundaries of any foreign power. Moreover, the general government reserved to itself the right to make use of any portion of these lands for the purpose of constructing warehouses, arsenals, or other public edifices which it might deem expedient for the defense or security of the nation.

And it would further appear that this restriction or reservation of the law of 1824 was recognized by the territorial legislature, for the report says (page 433):

> The restriction contained in paragraph 4 of the decree of August 18, 1824, is also fully

> recognized in the proceedings of the territorial legislature. For example: In the instructions of the territorial junta to the deputy from Upper California to the general congress of Mexico, dated July 25, 1836 (paragraph 4), it is expressly conceded that the general government of Mexico alone had power to dispose of islands on the coast of California, and (paragraph 19) the deputy is directed to solicit from the general government an absolute confirmation of the grants of land made in California under the colonization decree of August 18, 1824, and the regulations of November 21, 1828, releasing the proprietors from the restrictions contained in these laws and regulations.

And on page 435 of the same volume the author of the report speaks of onerous conditions imposed on holders of land titles in California, presumbably referring to the reservation claimed by the Government as in the instant case.

This reservation of the use for national defense in article 5 of the law of 1824 applied to all lands granted under the colonization law to missions and pueblos, as well as to individuals, and that this was the view taken as early as 1847 would seem to be indicated by the incident referred to by Captain Halleck, in the following language (page 437):

> Soon after General Kearney became governor of this country, representations were made to him that it was important to the growth and prosperity of the town of San Francisco that the general government of the

> United States should immediately designate what land within the limits of that town was required for its use (as pointed out in article 5th of the colonization law of August 18, 1824), the town being permitted to dispose of the remainder as municipal lands. General Kearney acting in the double capacity of civil governor of California and legal representative of the United States, made a decree dated March 10, 1847, directing the selection of such land as was required for government purposes, and surrendering on the part of the United States, all claim to the remainder within certain defined limits.

The action of General Kearney as Governor of the Territory of California and as local representative of the United States, directing by decree of March 10, 1847, the selection of such land in San Francisco as was required for governmental purposes, and surrendering on the part of the United States all claim to the remainder, was a practical construction of article 5 of the colonization law of August 18, 1824, by the officer in charge with the duty of executing it. As said in the report of the Secretary of State (page 437):

> This decree of General Kearney can hardly be regarded as an ordinary *land grant* made by a territorial governor; it was rather the act of an agent of the supreme executive power of the general government, designating the lands required for the purposes contemplated in article 5 of the law of August 18, 1824, and releasing the remaining lands

> within such limits from the action of the general reservation contained in that article.

It will be remembered that by this action General Kearney selected lands within the limits of the pueblo grant to San Francisco, which are now in the Presidio at that place. See Jones' Rep., Sen. Doc. No. 18, 31st Cong., 2d sess., p. 27.

The Secretary of the Interior in *Pueblo of Monterey*, 6 L. D. 179, decided October 4, 1887, considered the effect of §5 of the law of 1824 in relation to the military reservation and public buildings erected within the limits of the pueblo grant to the town of Monterey, and in holding that this reservation and the lands upon which these public buildings stood were not included in the grant to the pueblo, said (p. 182):

> After the independence of Mexico, the constituent Congress, on August 18, 1824, passed a decree relating to the colonization of the territories of the republic and the granting of lands therein; regulations under this decree were issued November 21, 1828. Under these laws and regulations the governors of the territories were authorized to make grants of vacant lands, but those for colonies and towns were not to be valid until approved by the supreme government; and if within ten leagues of the coast a similar approval was required as to all grants, public or private. *By clause five of said decree, the general government reserved to itself the right to make use of any portions of the granted lands for the purpose of constructing warehouses, arsenals, or other public edifices which it might deem*

expedient for the welfare or security of the nation. Again, on April 6, 1830, the same Congress enacted that "The executive may take such lands as it considers useful for fortifications or arsenals * * * indemnifying the states for the value thereof out of the amounts due by them to the federation."

In brief, it may be said that under the laws of Mexico in force in California, at the time of the acquisition of the latter country, the pueblos or towns were entitled, for their benefit and that of their inhabitants, to the use of the lands constituting the site of the town and adjoining it within the prescribed limits; and such lands could be disposed of by the municipal authorities in *solares* or building lots; or retained for common use, except such portions as were required by the general government for warehouses, arsenals, or other public edifices needed for national purposes. *Grisar* v. *McDowell*, 6 Wall. 363.

In a further discussion the Secretary said (p. 185):

Nor can there be any question that, prior to the conquest, under the laws, the Mexican authorities could at any time have taken possession and made reservation for national purposes of lands embraced in the pueblo grant. To this right of Mexico and all others the United States succeeded, first by conquest in 1846, and then by treaty in 1848; and, in continuous assertion of a right to this property for military purposes, in 1847 Captain Warner, by command of his superior officer, made survey of and staked off the lines of the military reservation.

This contemporaneous construction of the Governor of the Territory and of its Secretary of State, and the decision of the Secretary of the Interior, are entitled to most respectful consideration. *United States* v. *Moore*, 95 U. S. 760. See also *Schell's Executors* v. *Fauché*, 138 U. S. 562.

From the foregoing it is submitted that the language of this section of the law of 1824 applies to all lands colonized thereunder. This being true, we next inquire as to the character or extent of the power reserved by the Mexican government. The interpretation put upon this article by the Governor of the Territory and the Secretary of State, if the report of the Secretary of State can be credited, was also the interpretation of the territorial junta of Upper California, for its instructions to the deputy to the general congress of Mexico, dated July 25, 1836, as shown above, directed the deputy to solicit from the general government an absolute confirmation of the grants in California under the colonization decree of 1824 and the regulations of 1828, "releasing the proprietors from the restrictions contained in these laws and regulations."

The extent and nature of this right rest upon the same principle found in Spanish and French law under which lands abutting on rivers and bayous are subject to a servitude in favor of the public whereby such portions thereof as are necessary for the purposes of making and repairing public levees, may be taken, in pursuance of law, without

compensation. *Eldridge* v. *Trezevant*, 160 U. S. 452, 463. It will be noted in this connection that the Mexican patent, issued in exact conformity with the law of 1824, specifically provided that the grantee might inclose the land but without prejudice to the crossings, roads and *servitudes*. It is therefore respectfully submitted that servitudes were explicitly recognized as existing upon these lands in the patent to them, and that these servitudes are not only the riparian servitudes, the right to take them for levees, or the right to use their shores and banks for purposes of navigation, commerce and fishery, but the clearly paramount servitude declared in article 5 of the law, to use them, in pursuance of law, for the defense and security of the nation.

In *Los Angeles Milling Co.* v. *Los Angeles*, 217 U. S. 217, the Milling Company insisted that it had an unassailable title to a tract of land through which flowed the waters of a non-navigable stream, and in consequence of its patent it was a riparian owner, clothed with full rights as such to the use of the waters running through the land as part and parcel of its estate. The city of Los Angeles, successor to the pueblo of Los Angeles which had a confirmed claim to four square leagues of land, contended that although the confirmation did not in terms embrace the right to full use of the stream to its source for municipal purposes, such right was a well recognized incident annexed to pueblo grants. The Supreme Court of California sustained the claim of the city, although the effect of it was to burden all

the proprietors above the stream with a servitude in favor of the city. This court declined to review the judgment, holding that it was one of local law. It is well to note that the Supreme Court of California did not confine the servitude existing in favor of the city to the pueblo as it originally existed, but extended it to include the same rights in the annexed districts of the city.

Thus it is seen that servitudes for the common good were well recognized under the Mexican laws.

It is submitted that the United States, upon the acquisition of California, while assuming obligations under the law of nations and the treaty of Guadalupe Hidalgo to protect the property rights of the citizens of the territory, at the same time succeeded to all the rights which had been reserved to the Mexican government to use the national lands donated under the law of 1824 for national defense when its congress should find it expedient to do so.

Congress asserted the necessity for this island for national defense in the Act of July 27, 1917, and directed that possession be taken forthwith of the whole of North Island for such purpose, and in the language of the Act the rights of the general government are recognized.

II.

The United States as successor in interest of the Mexican government has not been divested of the servitude or right to use the land for national defense.

It is contended (1), that the decree of the United States District Court for the southern district of

California confirming the Carrillo grant to Billings and his associates, is conclusive that there is no reservation of any right or interest in this land; (2), that the patent issued by the United States divests the United States of any such reserve right; (3), that the government is guilty of laches in not earlier asserting its right, and (4), that this suit was barred by the statute of limitations, Act of March 3, 1891, 26 Stat. 1095, 1099.

1. *The decree of the United States District Court, confirming the Carillo grant, does not affect the servitude on this land for use for national defense.*

The decree of confirmation is limited to the establishment of the validity of the claim as it then existed and did not change the character of the grant. *Brown* v. *Brackett*, 21 Wall. 387; *Henshaw* v. *Bissell*, 18 Wall. 255, 264. The action of the United States in dealing with parties claiming under Mexican grants was a confirmation of the rights of the claimants rather than a quitclaim or release of the interests of the United States, *Boquillas Cattle Co.* v. *Curtis*, 213 U. S. 339, 344.

2. *The patent of the United States is merely confirmatory and does not release any rights of the United States.*

In *Boquillas Cattle Company* v. *Curtis*, *supra*, page 344, it was said that:

> It is not to be understood that when the United States executes a document on the footing of an earlier grant by a former sovereign it intends or purports to enlarge the

> grant. The statute under which the Mexican title was decided to be good speaks of confirmation throughout, and, in the most pertinent passage, directing a patent to be issued, says that it shall be issued "to the confirmee."

In *Los Angeles Milling Co.* v. *Los Angeles, supra*, it was said (page 227):

> This court, speaking by Mr. Justice Miller, tersely disposes of the nature of such old Mexican titles in *Adam* v. *Norris*, 103 U. S. 591, 593:
>
> "But the United States in dealing with parties claiming under Mexican grants, lands within the territory ceded by the treaty of Mexico, never made pretense that it was the owner of them. When, therefore, guided by the action of the tribunals established to pass upon the validity of these alleged grants, the Government issued a patent it was in the nature of a quitclaim—an admission that the rightful ownership had never been in the United States but had passed at the time of the cession to the claimant, or to those under whom he claimed. This principle has been more than once clearly announced in this court. The leading cases are *Beard* v. *Federy*, 3 Wall. 478; *Henshaw* v. *Bissell*, 18 Wall. 255; *Miller* v. *Dale*, 93 U. S. 473."
>
> It is perhaps more accurate to say that the action of the United States in such cases is a confirmation rather than a quitclaim. *Boquillas Land & Cattle Co.* v. *Curtis*, 213 U. S. 339, 344.

3. Laches will not run against the Government.

When the United States sues to enforce a public right or to protect the public interest, the defense of laches is not available. *United States* v. *New Orleans Pac. Ry. Co.*, 248 U. S. 507, 518; see also *United States* v. *Beebe*, 127 U. S. 338.

4. The Act of March 3, 1891, 26 Stat. 1095, 1099, has no application to lands other than public lands.

The contention that appellee can avail itself of the statute of limitations provided by the Act of March 3, 1891, is without merit, as is settled by *Northern Pacific Ry. Co.* v. *United States*, 227 U. S. 355, 367; *La Roque* v. *United States*, 239 U. S. 62, 68; *United States* v. *Whited & Wheless*, 246 U. S. 552, 561.

CONCLUSION.

The decree of the District Court that the United States has no servitude, right, title or interest in or to the lands in the bill of complaint described as the whole of North Island, is erroneous and should be reversed.

Respectfully submitted.

LESLIE C. GARNETT,
Assistant Attorney General.
CHARLES S. LAWRENCE,
Attorney.

FEBRUARY, 1921.

APPENDIX.

Decree of the 18th August, 1824, Respecting Colonization.

The sovereign general constituent Congress of the United Mexican States has been pleased to decree—

1st. The Mexican nation promises to those foreigners who may come to establish themselves in its territory security in their persons and property, provided they subject themselves to the laws of the country.

2d. The objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo, and can therefore be colonized.

3d. To this end the Congress of the States will form, as soon as possible, the laws and regulations of colonization of their respective demarcation, with entire conformity to the constitutive act, the general constitution, and the rules established in this law.

4th. Those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the seacoast, can not be colonized without the previous approval of the supreme general executive power.

5th. If, for the defence or security of the nation, the federal government should find it expedient to make use of any portion of these lands for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the general Congress, or during its recess with that of the government council.

6th. Before the expiration of four years after the publication of this law, no tax or duty (direcho) shall be imposed on the entry of the persons of foreigners, who come to establish themselves for the first time in the nation.

7th. Previous to the year 1840, the general Congress can not prohibit the entry of foreigners to colonize, except compelled to do so, with respect to the individuals of some nation, by powerful reasons.

8th. The government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the federation, with respect to the foreigners who may come to colonize. In the distribution of lands, Mexican citizens are to be attended to in preference; and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country, or inequality of circumstances, residence in the place to which the lands distributed belong.

10th. Military persons who are entitled to lands by the promise made on the 27th of March, 1821, shall be attended to in the States, on producing the diplomas granted to them to that effect by the supreme executive power.

11th. If by the decrees of capitulation, according to the probabilities of life, the supreme executive should see fit to alienate any portion of land in favor of any military or civil officers of the federation, it may so dispose of the vacant lands of the territories.

12th. No one person shall be allowed to obtain the ownership of more than one league square, of five thousand varas (5,000 v.), of irrigable land (de regadio), four superficial ones of land dependent on

the seasons (de temporal), and six superficial ones for the purpose of rearing cattle (de abreradiso).

13th. The new colonists can not transfer their possessions in mortmain (manos muertas).

14th. This law guarantees the contracts which the grantees (empressarios) may make with the families which they may bring out at their expense; provided they are not contrary to the laws.

15th. No one who, by virtue of this law, shall acquire the ownership of lands, shall retain them if he shall reside out of the territory of the Republic.

16th. The Government in conformity with the principles established in this law, will proceed to the colonization of the territories of the Republic.

General Rules and Regulations for the Colonization of Territories of the Republic.—Mexico, November 21, 1828.

It being stipulated in the 15th article of the general law of colonization of the 18th of August, 1824, that the Government, in conformity with the principles established in said law, shall proceed to the colonization of the territories of the Republic; and it being very desirable, in order to give to said article the most punctual and exact fulfillment, to dictate some general rules for facilitating its execution in such cases as may occur, his excellency has seen fit to determine on the following articles:

1st. The governors (gefes politicos) of the territories are authorized (in compliance with the law of the general Congress of the 18th of August, 1824, and under the conditions hereafter specified) to grant vacant lands in their respective territories to such contractors (empressarios), families, or private persons, whether Mexicans or foreigners, who may ask

for them, for the purpose of cultivating and inhabiting them.

2d. Every person soliciting lands, whether he be an empressario, head of a family, or private person, shall address to the governor of the respective territory a petition, expressing his name, country, profession, the number, description, religion, and other circumstances of the families or persons with whom he wishes to colonize, describing as distinctly as possible, by means of a map, the land asked for.

3d. The governor shall proceed immediately to obtain the necessary information whether the petition embraces the requisite conditions required by said law of the 18th of August, both as regards the land and the candidate, in order that the petitioner may at once be attended to; or if it be preferred, the respective municipal authority may be consulted, whether there be any objection to making the grant or not.

4th. This being done, the governor shall accede or not to such petition, in exact conformity to the laws on the subject, and especially to the before mentioned one of the 18th of August, 1824.

5th. The grants made to families or private persons shall not be held to be definitely valid without the previous consent of the territorial deputation, to which end the respective documents (espedientes) shall be forwarded to it.

6th. When the governor shall not obtain the approbation of the territorial deputation, he shall report to the supreme government, forwarding the necessary documents for its decision.

7th. The grants made to empressarios for them to colonize with many families shall not be held to be definitely valid until the approval of the supreme

government be obtained; to which the necessary documents must be forwarded, along with the report of the territorial deputation.

8th. The definitive grant asked for being made, a document signed by the governor shall be given, to serve as a title to the party interested, wherein it must be stated that said grant is made in exact conformity with the provisions of the laws in virtue whereof possession shall be given.

9th. The necessary record shall be kept in a book destined for the purpose, of all the petitions presented and grants made, with the maps of the lands granted, and the circumstantial report shall be forwarded quarterly to the supreme government.

10th. No capitulization shall be admitted for a new town except the capitulizator bind himself to present as colonists twelve families at least.

11th. The governor shall designate to the new colonists a proportionate time within which he shall be bound to cultivate or occupy the land on the terms and with the number of persons or families which he may have capitulized for, it being understood that if he does not comply, the grant of the land shall remain void; nevertheless, the governor may revalidate it in proportion to the part which the party may have fulfilled.

12th. Every new colonist, after having cultivated or occupied the land agreeable to his capitulization, will take care to prove the same before the municipal authority, in order that, the necessary record being made, he may consolidate and secure his right of ownership, so that he may dispose freely thereof.

13th. The reunion of many families into one town shall follow, in its formation, interior government, and policy, the rules established by the existing laws for

the other towns of the republic, special care being taken that the new ones are built with all possible regularity.

14th. The minimum of irrigable land to be given to one person for colonization shall be 200 varas square; the minimum of land called de temporal shall be 800 varas square, and the minimum for breeding cattle (de obsevadeso) shall be 1,200 varas square.

15th. The land given for a house lot shall be 100 varas.

16th. The spaces which may remain between the colonized lands may be distributed among the adjoining proprietors who shall have cultivated theirs with the most application and have not received the whole extent of land allowed by the law, or to the children of said proprietors, who may ask for them to combine the possessions of their families; but on this subject particular attention must be paid to the morality and industries of the parties.

17th. In those territories where there are missions the lands occupied by them can not be colonized at present, nor until it be determined whether they are to be considered as the property of the establishments of the neophytes, catechumens, and Mexican colonists.

○